IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 315 OF 2004.

Mr. V.R. Dalal and others .. Petitioners.
V/s
Yogendra Naranji Thakkar & Anr. ..Respondents.

Mr. S.T. Panikar with Ms. Pallavi R. Viswasrao for the petitioners.

Mr. S.V. Marwadi for t respondent NO.1.
Mrs. M.M. Deshmukh, APP for the State.

CORAM : S.C. DHARMADHIKARI, J.

DATE : 13TH OCTOBER, 2006.

P.C.

. When notice was issued of this petition, this Court observed in the order dated 28th June, 2004 that the co-accused Nos. 1 to 7 have preferred Writ Petition No. 542 of 2003, wherein notice was issued and ad interim stay was granted. On the basis of the order passed in that petition, the notice was ordered to issue in this petition as well.

2. The petition is at the instance of the petitioners who are original accused 8 to 13. the criminal complaint C.C.No. 45/S/2003 is filed in the

Court of Metropolitan Magistrate at Kurla against 13 persons.

3. Out of the total 13 accused, accused Nos. 1 to 7 filed Criminal Writ Petition No. 542 of 2003.

4. The original complainant's Counsel Mr. Marwadi brings to my notice an order passed by this Court on 22nd June, 2005 in Criminal Writ Petition No. 542/2003, dismissing the same by giving reasons.

5. Mr. Panikar appearing for the petitioners, does not dispute that such an order is passed. However, he submits that the case of the present petitioners stand on a slightly different footing, although they are accused in the same criminal case, as far as they are concerned, they are not the partners of M/s N.M. Raiji & Company. This N.M. Raiji and Company was a partnership firm in which all accused 1 to 7 and the complainant were partners. The petitioners are partners of distinct firm which is known as "Dalal & Shah" and later on "M/s Gandhi Dalal & Shah". In such circumstances, it would not be proper to rely upon the order passed in the other writ petition. These are

disputes between persons, who are partners, during the course of administration and management of the business of the firm. It is a purely civil dispute. Allowing criminal proceeding according to Shri Panikar would be abuse of process of the Court.

6. Mr. Panikar submits that the petitioners as also the complainant and other accused are professionals in as much as they are Chartered Accountants and members of the C.A. Institution.

7. In my view, the petitioners as also other accused are part of the same complaint. The entire complaint is referred by the Single Judge while deciding Criminal Writ Petition No. 542/2003. The allegations therein are that the petitioners are in conspiracy with other accused and that is how the benefits of the new firm are denied by allegedly dissolving the firm N.M. Raiji & Company without the knowledge of the complainant and behind his back. In such circumstances bifurcation of the pleas of the petitioners and other accused would not be permissible. More so, when this Court has upheld the prima facie view of the Magistrate in directing issuance of process to some of the accused.

8. For the reasons assigned in Criminal Writ Petition No.542/2003, this writ petition is summarily dismissed.

9. At this stage Mr. Panikar seeks continuation of ad interim order to enable the petitioners to approach higher Court or to take such steps as are permissible in law.

10. Mr. Marwadi opposed this request. However, since ad interim order is continued for the past more than two years, no prejudice would be caused, if it is continued for a further period of 8 weeks. Ad interim order continued for 8 weeks.

(S.C. DHARMADHIKARI, J.)